

NOT INCLUDED IN
BOUND VOLUMES

RKE
Tucson, AZ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GC SERVICES LIMITED PARTNERSHIP

and

Case 28-CA-166389

BRADLEY NELSON

**ORDER RESCINDING ORDER APPROVING STIPULATION,
GRANTING MOTION, AND TRANSFERRING PROCEEDING
TO THE BOARD**

This matter came before the National Labor Relations Board pursuant to a Board Order granting a joint motion by the parties to transfer this proceeding directly to the Board for a decision based on the stipulated record. For the reasons that follow, the Board has now decided to rescind its prior Order and to deny the joint motion.

On March 30, 2016, the General Counsel, through the Regional Director for Region 28, issued a complaint alleging that, beginning about December 15, 2015, the Respondent maintained and required employees to sign, as a condition of employment, its Mutual Agreement for Dispute Resolution and a Code of Business Ethics and Conduct including GC Services' Dispute Resolution Program. On September 26, 2016, the parties filed a joint motion to waive a hearing and a decision by an administrative law judge and to transfer this proceeding to the Board for a decision based on a stipulated record. The parties stipulated that the issue to be resolved is whether the Respondent's maintenance of its Mutual Agreement for Dispute Resolution and GC Services' Dispute Resolution Program (hereafter "Arbitration Agreement") interferes with, restrains, and coerces employees in the exercise of the rights guaranteed under

Section 7 of the Act in violation of Section 8(a)(1) of the Act. On January 9, 2017, the Board issued an Order Approving Stipulation, Granting Motion, and Transferring Proceeding to the Board. Pursuant to that Order, the Board transferred the case to the Board for the purpose of issuing findings of fact, conclusions of law, and a Decision and Order, and set a briefing schedule. On February 7, 2017, the Board granted the Respondent's request for an extension of time in which to file briefs and set the due date for initial briefs at 35 days after the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018). On June 4, 2018, the General Counsel filed a request for extension of time to file briefs. On June 5, 2018, the Board granted the request. A due date for filing of briefs has not been set. No briefs have been filed.

The stipulated issue—that the Respondent, by maintaining its Arbitration Agreement, has been violating Section 8(a)(1) of the Act—relies on the Board's decisions in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), holding that the maintenance and enforcement of an arbitration agreement requiring employees to waive the right to commence or participate in class or collective actions in all forums, whether arbitral or judicial, violates Section 8(a)(1).

Recently, the Supreme Court issued its decision in *Epic Systems*, a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by

individualized arbitration violate the National Labor Relations Act. Id. at ___, 138 S. Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at ___, 138 S. Ct. at 1619, 1632.

In light of the Supreme Court’s decision in *Epic Systems*, which overrules the Board’s holding in *Murphy Oil USA, Inc.*, the Board now rescinds its January 9, 2017 Order and denies the parties’ September 26, 2016 joint motion without prejudice.

Dated, Washington D.C., October 31, 2018.

By Direction of the Board:

/s/

Farah Qureshi
Associate Executive Secretary